

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

CABLE TECH, INC.

And

Case 19-CA-29872
19-CA-29909

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1547, AFL-CIO

David L. Schaff, Esq., Anchorage, Alaska, and
Martin Eskenazi, Esq., Seattle, Washington,
for the General Counsel.

Bart Tiernan, Esq.,
of Anchorage, Alaska for the Respondent.

James K. Metcalfe, General Counsel,
International Brotherhood of Electrical Workers,
Local 1547, of Anchorage, Alaska,
for the Charging Party.

DECISION

Statement of the Case

JOHN J. MCCARRICK, Administrative Law Judge: This case was tried in Anchorage, Alaska on March 7, 2006, based upon the Order consolidating cases, consolidated complaint and Notice of Hearing issued on December 29, 2005 by the Regional Director for Region 19. The consolidated complaint alleges that Cable Tech, Inc., Respondent, violated Section 8(a)(1) and (3) of the Act by engaging in and creating the impression of surveillance of its employee' union activity, by intimidating employees from engaging in union activities, by soliciting employee grievances in order to discourage employees' union activity, by promising and impliedly promising benefits in order to discourage employees' union activities, by threatening employees with discharge for engaging in union activities, and by suspending and later terminating Dennis Knebel for engaging in union activity. Respondent filed a timely answer to the consolidated complaint denying any wrongdoing.

Findings of Fact

Upon the entire record herein, including the stipulation, and the briefs from the General Counsel and Respondent, I make the following findings of fact.

I. Jurisdiction

Respondent, an Alaska corporation, with facilities located in Anchorage, Alaska, is engaged in the business of installing and servicing data communication cable lines. Annually, Respondent in the course of its business operations provided services valued in excess of \$50,000 for General Communications, Inc., an enterprise within the State of Alaska directly engaged in interstate commerce.

Based upon the above, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

Respondent admitted and I find that the International Brotherhood of Electrical Workers, Local 1547, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. The Termination of Dennis Knebel

This is a salting case in which Respondent hired Union organizer Dennis Knebel, (Knebel), on June 27, 2005¹, as a cable installer to install coaxial TV cable in residences. Respondent's President is Fred Thomas, (F. Thomas), F. Thomas' daughter, Tamara Thomas, (T. Thomas), is Respondent's Vice President in charge of residential cable installation and Chris DeVito, (DeVito), is Respondent's Vice President, in charge of construction. Respondent's employees are not represented by a labor organization.

On his June 23 application for employment with Respondent,² under the heading "Most Recent or Current Employer Name" Knebel listed that he was employed by Control Contractors as a cable installer from 3/98 to 6/05 and that his reason for leaving was, "no work and no enough hours." There is no dispute that Knebel did not divulge his employment as an organizer with the Union in the application or that the dates of his employment with Control Contractors were inaccurate.

1. The Union Meeting at Gallo's Restaurant

Immediately after being hired, Knebel began organizing Respondent's employees. On June 30, Knebel conducted a meeting for Respondent's employees at Gallo's Restaurant in Anchorage. The meeting commenced at about 7:00 p.m. with about eight employees present, including Respondent's installer, Andrew Pullen (Pullen). The employees were seated at a table talking when both F. and T. Thomas³ entered the restaurant and a short time later sat down at the employees' table. Knebel asked the Thomases what they were doing at the restaurant. T. Thomas said they were having dinner. Knebel said, "I'm an IBEW organizer and

¹ Unless otherwise specified all dates herein refer to 2005.

² Respondent's Exhibit 1.

³ At the hearing, the Respondents admitted the allegations of Complaint paragraphs 5(a) and (b) that F. Thomas engaged in surveillance of employees Union activities and intimidated employees from engaging in union and concerted activity by seating himself at and refusing to leave the table at Gallo's restaurant where employees were discussing union matters.

we are having a union meeting. It's a violation of the National Labor Relations Act for you to be here. You must leave." T. Thomas said, "It's a free country. So, you are an organizer. It's not on your resume." Knebel replied, "If I'd said I was an organizer, you wouldn't have hired me. How did you find out about this meeting?" T. Thomas said that someone told me. T. Thomas told the employees that their meeting violated company policy because they were wearing company T-shirts in a place that served alcohol. However, Respondent's President, F. Thomas, immediately contradicted Ms. Thomas and said there was nothing wrong with wearing company T-shirts in a restaurant that served alcohol. Knebel again told the Thomases that they had to leave but T. Thomas said she would not. F. Thomas said he could not afford union wages and that it would put him out of business. Knebel said that they just wanted a contract and that they did not want to put Respondent out of business. Knebel said that the Thomases presence was intimidating the employees and that they should leave. Three employees said that they felt intimidated. T. Thomas then said, "Anyone here who wants to be union can give two weeks notice and sign the books." F. Thomas said he had heard enough and was leaving. After being present for an hour, both Thomases left the restaurant.⁴

2. The Suspension and Termination of Knebel

On June 6, while at work, T. Thomas and DeVito told Knebel that they wanted to talk to him. Both T. Thomas and DeVito told Knebel that he was suspended for trespassing on their landlord, Craig Sparrowgrove's, (Sparrowgrove) property. Both T. Thomas and DeVito told Knebel that he was under investigation. However, at no time did Respondent seek Knebel's position.

3. The Sparrowgrove Correspondence

In 2004 Knebel was an employee of Sparrow's Electric, Inc., owned by Sparrowgrove. Knebel had tried to organize Sparrowgrove's employees. On December 12, 2004, Sparrowgrove issued a notice of eviction⁵ that was received by Respondent at about that time. The notice states:

Eviction Notice From Property

Dated: 12/18/04

The following persons or relatives have been evicted from the property located at 351 East 92nd Avenue. There have been numerous activities that have occurred in and around the above property That have caused financial damage and also threats of violence. Therefore these individuals are not allowed in or around this property at any time.

This list includes these people:

Tracy Wolf

⁴ T. Thomas testified that she and her father left the restaurant after they learned of their employees' union activity. She stated they were present for about ten minutes. In view of the detailed testimony of both Knebel and Pullen describing with great specificity conversations and interchanges between the Thomases and the employees at Gallos, it is unlikely that the Thomases were present for only ten minutes and left after they learned a union meeting was taking place. I credit the testimony of Knebel and Pullen over that of T. Thomas.

⁵ General Counsel's Exhibit 3.

Chet Beasley
Tom Youngblood
Dennis Kneble
Andrew Schell

5

Respectfully Yours:

(signed Craig Sparrowgrove)
(President)

10

On June 13, 2005, Sparrowgrove issued a letter⁶ reversing his December 18, 2004 notice of eviction. The letter states:

15

Reversal of eviction notice

Date 6/13/05:

To Whom this may concern!

20

After an investigation into the vandalism and other activities on the property described above, It as come to our attention that these individuals were in fact not responsible. I have been contacted By the parties of concern that they were contacted by APD, there weapon has been recovered and that The correct perpetrators were apprehended.

25

So at this time the persons named in this latter are allowed to enter property.

30

Professionally yours

(President)

35

In 2005, T. Thomas and DeVito approached Sparrowgrove and asked him who in his company was in the Union. Sparrowgrove told them Knebel was in the Union. Despite his rescission of the December 12 eviction notice, at Respondent's request, on July 1, 2005, Sparrowgrove sent a notice to Respondents stating that he did not want any of the persons in his December 12, 2004 eviction notice on his property.⁷

40

On July 11, Respondent sent Knebel a letter⁸ stating that they had completed their investigation. The letter went on to state:

45

In brief, on December 18, 2004, our landlord, Mr. Sparrowgrove of C&S Development LLC, delivered to us a list of persons that were evicted from the property that both C&S Development LLC and Cable Tech, Inc., base their operations. You were named on the list of persons prohibited from the shared

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⁶ General Counsel's exhibit 11.

⁷ General Counsel's exhibit 3, page 3.

⁸ General Counsel exhibit 3.

property. Cable Tech, Inc. did not know, and you did not disclose at the time you were hired, June 27, 2005, that you had any issues with C&S Development, LLC or were prohibited from premises.

5 In a letter dated June 1, 2005, Mr. Sparrowgrove noticed your presence on the property and again informed us that you were not allowed on the property shared by the two businesses.

10 Unfortunately, since your presence on the above referenced property is essential to your employment at Cable Tech, Inc., and our landlord forbids your presence on the property, we have no choice but to terminate your employment at Cable Tech, Inc., effective July 11, 2005.

15 We appreciate your hard work in your brief tenure with the company and wish all the best in your future endeavors.

Sincerely,

20 Tamara Thomas
V.P. of Cable Tech, Inc.

On about September 19, Knebel called Respondent to seek reinstatement since Sparrowgrove had sold the property where Respondent's facility was located. T. Thomas said she would have to see who bought the property.

25 Again on September 26, Knebel called T. Thomas to seek reinstatement and she referred Knebel to an undated letter.⁹ In the letter Respondent listed additional negative factors that had come to their attention since Knebel's termination that would preclude Knebel's rehire, including his failure to disclose that he had been evicted from the Cable Tech property, his
30 failure to disclose his job with the Union, his filing an unfair labor practice charge with the Board and his participation in the Union campaign in the NLRB representation case involving Respondent. Despite these negative factors T. Thomas invited Knebel to talk to her to explain if she had misinterpreted his sincerity in seeking full-time employment with Respondent. Despite this invitation, when Knebel attempted to apply for work with Respondent on about
35 September 28, T. Thomas told Knebel to leave Respondent's property. On September 28, Knebel responded in writing to T. Thomas' letter.¹⁰ In his letter Knebel denied having been evicted from Respondent's property. At the hearing T. Thomas admitted that Respondent would not rehire Knebel because of the allegations he made in his September 28 letter.

40 **B. The Captive Audience Meetings**

1. The July 19 Meeting¹¹

45 After a petition for representation of Respondent's cable installers was filed by the Union, Respondents conducted an employee meeting on July 19. Present for Respondent were Devito, T. Thomas, F. Thomas and counsel for Respondent Bart Tiernan (Tiernan). After being

⁹ General Counsel exhibit 4.

¹⁰ General Counsel exhibit 5.

50 ¹¹ At the hearing Respondent admitted that F. Thomas solicited grievances at the July 19, 2005 meeting.

introduced to the employees as Respondent's attorney, Tiernan explained that he had been hired by Respondent to "deal with the Union."

After some discussion of why the employees did not need a union, Tiernan said:

Don't go out and pay for something you can fix yourself. Give this company a chance to fix any problems you have. I've talked to some of the employees already, just out of my own curiosity. Without even Vito (DeVito) or Tam (T. Thomas) or Fred (F. Thomas) knowing. I've talked to 'em. And they told me there's problems in this company. There's no doubt about it. These guys aren't perfect. No one's perfect. There's no perfect company out there. But don't fix something that's not broke. Try to fix it yourself. It can be fixed. Don't throw your money away for some organization that is more concerned about who's getting elected next political election or their own finances.¹²

Later in the meeting Tiernan told employees regarding the issue of employer favoritism, "If that's bothering you or uh, you think somebody's getting promoted over somebody else, or somebody's getting better treatment you gotta let the company know so they can fix that. They gotta void that appearance."¹³

Near the end of the meeting DeVito told the employees,

If you guys wanna go for the Union you wanna be a Union employee go to the Union. Just go down to the Union hall, sign up. OK? Just go. For real. Just leave. I got no problems with that. I'm not gonna ask you to stay if you don't wanna be here. I ain't never begged nobody to stay on my job. OK? But I don't want the Union here. And that's the bottom line.¹⁴

2. The July 22 Meeting

Respondent conducted another employee meeting on July 22. Present for Respondent was DeVito. F. Thomas, T. Thomas and Tiernan. DeVito began the meeting by saying:

I want you guys to know that through these meetings I've been trying to keep diligent notes of things we need to do. Uh, address that are questions that people have concerns about. Uh obviously we can't go promising anything that will change anything. All we can tell you is that, you know, we can certainly address 'em and when the time comes when we can look at 'em on each individual cases. But the questions I believe have been asked up to this point and if these are if there's more questions please reiterate you know to me when we're done with this questions. I've got tool deductions as a issue, I've go uh work uh what do I have when it's time to go you know to retirement where do where do I stand if I stay here twenty years or thirty years or whatever how long you stay. Uh, training what kind of training and uh where's the company going?

¹² General Counsel's exhibit 7(a), page 2. Respondent's July 19, July 22 and August 12 meetings with employees were audiotaped by employee Andrew Pullen. These tapes were transcribed by the Union and excerpts of both the tapes and their transcripts were received into the record.

¹³ Id. at page 11.

¹⁴ Id. at page 16.

Where are your goals or where are you going to achieve the next level after you done MASTER WORK, or you know, need a profession of what you do now, where can you go from there? Those are the questions that I see that have been brought to the table and things obviously we like to fix and have an opportunity to fix before anybody else. But, that's all I got.¹⁵

F. Thomas added, "So working on answers for those respects there are some other training issues out there. Uh we're doing some research on some of the aspects of what's available to people and there are another couple training options out there that we could bring up in the near future."¹⁶

During this meeting an employee brought up the subject of merit reward system. DeVito addressed the question and said,

They go through courses and classes and a matter of fact one of our competitors does and rewards individuals who that take certain tests that show, that show that they want the ability to learn. Uh right now I can't say that we can do it cause it sounds like a promise you know but I can tell you that we're looking at it. It's something that certainly is, is the hard thing is that these things have never been addressed to us where we can sit here and tell you exactly what we're doing now because this, this union thing is going on and then when you bring the union thing in there's certain things I can't tell you. Why do you think I got counsel sitting here? OK so that I'm tired, tired of getting up here feeling like I wanna tell you what I want you to know or express my personal feelings and get slammed with unfair labor practices because of just what I say can get misconstrued or stretched or promises. I can't do that.¹⁷

Later an employee raised the issue of job advancement with Respondent. Tiernan answered the employee's question by saying that he spoke with Respondent about their wage scale, "And we talked about not only a wage structure but we're gonna do that. And we're gonna do uh other things too. We're looking at retirement and 401k and things like that. It's gonna be down on paper. OK. Uh and in fact we're already uh, well,"¹⁸

DeVito added,

Yeah, I can't come in here right now apparently because he says I can't come in here and say this is what I have here right now because then it looks like, it looks like a bribe. It looks like all I'm doing is trying to do this for you so you don't vote the Union in. So I wanna, I don't want to keep going and have you given unfair labor practices against me. I mean we're gonna get em anyways that's just the way it comes. But it ain't no use in having a care free attitude that you don't care that you take all these hits and after you do this, again, I can't promise you anything, can't make it sound like it's a bribe. OK? I can just tell you that we're looking at it. That obviously, uh, for me that was never brought to my attention till right now. That question about ceilings and where the structure lies in pays and

¹⁵ General Counsel's Exhibit 7(b) at page 1.

¹⁶ Id. at page 1.

¹⁷ Id. at page 4.

¹⁸ Id. at page 6.

moving to departments. It's only been brought to my attention, me personally, uh, now. In the last couple of, two days basically. So, no I think we could of easily fixed this problem, well, and I can't promise you again anything but, I'd like a chance. I'd like the chance to be able to fix it. You know, I, I, it can be fixed. All we're askin' is for somethin' on paper and if you held to it I don't think that we've ever put anything on paper.¹⁹

Tiernan discussed the lack of flexibility when personnel policies are reduced to writing and added, "You know, once you guys either elect or not elect a union here, even if we get that far, ok. We don't want to be back here in another year, ok. We're gonna fix whatever caused the situation to happen right now, to be fixed. Ok. We don't wanna be back here in a year, two years, doin' the same thing."²⁰

An employee raised an issue of job security and DeVito replied, "I think what you really want to take care of the people that take care of me. You stick with me I take care of you in the long run is I believe is more of what I said. That was about what is."²¹

3. The August 12 Meeting

The next employee meeting was conducted by Respondent on August 12 and present for Respondent were F. Thomas, T. Thomas and Devito. T. Thomas initiated the meeting by stating,

"Um, another thing is um, we were thinking, that maybe some of you guys may have ideas, may be looking to advance in training. . . just to kind of see if any of you would be interested in getting a loan on anything like that to see you guys can be more knowledgeable to see how it works, how we're looking at that. We'd like to know you guy's feedback and what you guys think. You guys can further you training in _____ technology. Um, so I'd like to see a raise of hands of who may be interested."²²

Finally, the issue of training employees was raised and DeVito replied, "I've never been around a company that if you try to better yourself it doesn't help you out. On a personal note I think when you start helpin' employees to become educated uh in the field that they do they tend to be more loyal. You know, 'cause they see that you're trying to take care of them and try to better yourself at the same time. It's my opinion."²³

C. The Analysis

1. The 8(a)(1) Allegations

a. Surveillance and Impression of Surveillance

In Complaint paragraph 5(a) it is alleged that on June 30 at Gallo's Restaurant F. Thomas engaged in surveillance of employees' union activities. Similarly in Complaint

¹⁹ Id. at page 6

²⁰ Id at page 7.

²¹ Id. at page 8

²² General Counsel's exhibit 7(c) at page 1.

²³ Id. at page 3.

paragraph 6(a) General Counsel alleges that on June 30, T. Thomas engaged in surveillance of Respondents' employees' union activities and created the impression of surveillance of Respondents' employees' union activities.

5 In *Rogers Electric, Inc.*, 346 NLRB No. 53, slip op. at page 1 (2006), the Board held that the, “. . . test for determining whether an employer has created an impression of surveillance is whether the employees would reasonably conclude from the statement in question that their protected activities were being monitored. *Mountaineer Steel, Inc.*, 326 NLRB 787 (1998).” Moreover, an employer engages in coercive surveillance in violation of Section 8(a)(1) of the Act
10 when it actually watches their protected activities in a way that is out of the ordinary. *Aladdin Gaming, LLC*, 345 NLRB No. 41 p 1 (2005). Open employer observation of protected activity that is publicly conducted is not unlawful. However, when that observation becomes intrusive it becomes coercive. *Kenworth Truck Company, Inc.*, 327 NLRB 497, 501 (1999).

15 At the hearing Respondent admitted that F. Thomas engaged in surveillance of employees' union activities by refusing to leave Gallo's restaurant during a Union meeting. T. Thomas engaged in the same conduct as her father. Ms. Thomas went to Gallo's Restaurant with the express purpose of attending the employees' meeting. After learning this was a Union
20 meeting and her presence was objectionable to the Union representative and made employees uncomfortable, both Thomases insisted on remaining. The Thomases presence at a private employee meeting, after work, in a private restaurant was out of the ordinary. The intrusion into the employee meeting, the refusal to leave despite repeated demands that they do so, together with statements that employees should quit and that the Union would force Respondent to go
25 out of business, converted public observation into coercive surveillance that violated Section 8(a)(1) of the Act.

In addition, during the Union meeting in response to Knebel's inquiry, Ms. Thomas told Knebel and the other employees she had heard of the meeting through people she knew. The Thomases unannounced appearance at a clandestine Union meeting together with Ms. Thomas
30 statement to employees at the meeting that she knew of the meeting through people she knew, leaves no doubt that Respondents' employees would reasonably conclude that their protected activities were being monitored by T. Thomas. Ms. Thomas' statement that she learned of the Union meeting from people she knew created the impression that the employees' protected activity was under surveillance in violation of Section 8(a)(1) of the Act.

35 **b. Refusal to Leave the Union Meeting**

In Complaint paragraphs 5(b) and 6(b) General Counsel alleges that on June 30 at Gallo's Restaurant F. Thomas and T. Thomas intimidated employees from engaging in union
40 and concerted activity by sitting at and refusing to leave the table where employees were discussing union business. Also in Complaint paragraph 6(b) it is alleged that on June 30, T. Thomas intimidated employees from engaging in union and concerted activities by telling employees they were in violation of company policy by being at Gallo's restaurant wearing company T-shirts.

45 At the hearing Respondent admitted the allegations of paragraph 5(b).

As noted above, during the June 30 Union meeting T. Thomas was present at the employee's table and when requested, refused to leave. I have previously found this conduct
50 constituted surveillance, was coercive and violates Section 8(a)(1) of the Act. Complaint paragraph 5(b) and the first part of paragraph 6(b) are duplicative and will be remedied by my earlier findings.

While at the table Ms. Thomas stated that it was contrary to company policy for employees to wear company T-Shirts in a place where liquor was being served. However, this statement was immediately contradicted by Respondent's president F. Thomas. There was no evidence introduced at the hearing to establish that Respondent maintained a policy regarding wearing company T-Shirts. The only testimony was that the employees were unaware of any policy concerning wearing of company T-Shirts in a restaurant.

The basic test for a violation of Section 8(a)(1) is whether under all the circumstances the employer's conduct reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed by the Act. *Mediplex of Danbury*, 314 NLRB 470, 472, (1994). See, e.g., *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992), citing *American Freightways Co.*, 124 NLRB 146, 147 (1959).

Ms Thomas' statement, Respondent's employees were in violation of company policy for wearing company T-shirts at the Union meeting at a place where alcohol was served, must be viewed in the totality of the circumstances, including her and her father's coercive presence at the Union meeting, her father's threat that the Union would put Respondent out of business and her statement that employees who wanted the Union should quit. In these circumstances Ms. Thomas' statement regarding the wearing of company T-shirts could reasonably have been received by Respondent's employees as a threat of discipline for engaging in protected activity. However, her statement was immediately disavowed by her father and superior F. Thomas, Respondent's president, thus dissipating the coercive effect. *Saginaw Control and Engineering, Inc.*, 339 NLRB 541 (2003). I find that Ms. Thomas' statement did not violate Section 8(a)(1) of the Act and I will dismiss this portion of the complaint.

c. Promise of Benefits

In Complaint paragraph 5(d) General Counsel alleges that on about July 22 and August 12, F. Thomas promised Respondents' employees training and health insurance benefits in order to discourage employees from engaging in union activity. In Complaint paragraph 6(d) it is alleged that on August 12, T. Thomas promised employees that Respondent would look into employee advancement through training and loans to employees for training in order to discourage employees' union activity. In Complaint paragraph 7(c) it is alleged that on August 12, DeVito impliedly promised employees improved benefits and working conditions by telling them that providing opportunities to better themselves makes them more loyal and on August 19 provided information to employees on SETV training.

The Board has long held that granting or promising benefits during an organizing campaign are meant to improperly influence employees' choice in the selection of a representative. In order to validate the promise of benefits an employer must demonstrate a legitimate business reason for the timing of a promise or grant of benefits during an organizing campaign. *Pacific FM, Inc., dba KOFY TV-20*, 332 NLRB 771 (2000). See also *McAllister Towing & Transp. Co.*, 341 NLRB No. 48 (2004).

(1) The July 22 Promise of Benefits

At the July 22 employee meeting F. Thomas told Respondent's employees, "So working on answers for those respects there are some other training issues out there. Uh we're doing some research on some of the aspects of what's available to people and there are another couple training options out there that we could bring up in the near future."

Later in the July 22 meeting DeVito discussed training and told employees Respondent was looking into rewarding employees for training:

5 They go through courses and classes and a matter of fact one of our competitors does and rewards individuals who that take certain tests that show, that show that they want the ability to learn. Uh right now I can't say that we can do it cause it sounds like a promise you know but I can tell you that we're looking at it. It's something that certainly is, is the hard thing is that these things have never been addressed to us where we can sit here and tell you exactly what we're doin'
10 now because this, this union thing is goin on and then when you bring the union thing in there's certain things I can't tell you. Why do you think I got counsel sitting here? OK so that I'm tired, tired of getting up here feeling like I wanna tell you what I want you to know or express my personal feelings and get slammed with unfair labor practices because of just what I say can get misconstrued or stretched or promises. I can't do than²⁴
15

During the July 22 meeting, an employee raised the issue of job advancement with Respondent. Tiernan answered the employee's question by saying that he spoke with Respondent about their wage scale:

20 And we talked about not only a wage structure but we're gonna do that. And we're gonna do uh other things too. We're looking at retirement and 401k and things like that. It's gonna be down on paper. OK. Uh and in fact we're already uh, well,²⁵
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(2) The August 12 Promise of Benefits

T. Thomas initiated the August 22 employee meeting telling employees that Respondent was considering employee loans for those looking to get advanced training:

30 Um, another thing is um, we were thinking, that maybe some of you guys may have ideas, may be looking to advance in training. . . just to kind of see if any of you would be interested in getting a loan on anything like that to see you guys can be more knowledgeable to see how it works, how we're looking at that. We'd like to know you guy's feedback and what you guys think. You guys can further
35 you training in _____ technology. Um, so I'd like to see a raise of hands of who may be interested.²⁶

Later during the August 12 meeting F. Thomas told employees Respondent was considering improved health insurance and said:

40 Another item that's been mentioned in our meeting here is uh we've kind of heard a little feedback about the medical health insurance. Uh, we're working, we're anticipating possibly getting a new, um, in the fall, uh, putting it out to the people
45 here and taking a vote as to uh, possibly, uh, upgrading to a different plan.

²⁴ Id. at page 4.

²⁵ Id. at page 6. While the Complaint did not allege Tiernan made this statement, the matter was fully litigated. *Hi-Tech Cable Corp.*, 318 NLRB 280 (1995).

²⁶ General Counsel's Exhibit 7(c) at page 1.

Finally, the issue of training employees was raised and DeVito replied to employees:

I've never been around a company that if you try to better yourself it doesn't help you out. On a personal note I think when you start helpin' employees to become educated uh in the field that they do they tend to be more loyal. You know, 'cause they see that you're trying to take care of them and try to better yourself at the same time. It's my opinion.²⁷

In both meetings, which occurred during the Union's organizing campaign, F. Thomas promised Respondents' employees that Respondent would provide both training benefits and improved health insurance. T. Thomas promised employees loans from Respondent to further their training. DeVito promised increased training and advancement and Tiernan promised increased wages and benefits. No legitimate business reason was given for the timing of these promised benefits. Thus it is presumed that they were made to improperly influence Respondent's employees' choice of a union representative. Such promises in the context of a union organizing campaign violate Section 8(a)(1) of the Act.

d. Solicitation of Grievances

In Complaint paragraph 5(c) General Counsel alleges that on July 19 F. Thomas solicited employee grievances and complaints by asking employees to create a list of grievances to give him in order to discourage employees from engaging in union activity. Likewise in Complaint paragraph 7(b),²⁸ it is alleged that on July 22, DeVito asked employees to give Respondent a chance to resolve their grievances over tool deductions, retirement and training in order to discourage employees' union activity. Finally in Complaint paragraph 8²⁹, it is alleged that on July 19, Respondent through its counsel Bart Tiernan solicited employee grievances and promised to remedy them in order to discourage employees' union activity.

The Board has held that in cases involving the solicitation of grievances by an employer in the context of a union organizing campaign that it is not so much the solicitation of the grievances that constitutes the coercive conduct but rather the implicit promise to remedy them. *Sacramento Recycling & Transfer Station*, 345 NLRB No. 39 (2005); *Doane Pet Care, DPC*, 342 NLRB No. 115 fn 2 (2004).

(1) The July 19 allegations regarding F. Thomas

At the hearing Respondent admitted the allegations of paragraph 5(c).

²⁷ Id. at page 3.

²⁸ At the hearing Counsel for the General Counsel moved to amend the Complaint by removing paragraph 7(a). The motion was granted.

²⁹ In their brief Counsel for the General Counsel contend that at the July 22 employee meeting DeVito said that Respondent did not want to revisit the employee issues year after year but wanted to fix them now. It is clear from the record that this statement was made by Tiernan. While the Complaint does not allege that Tiernan made this statement on July 22, the allegation closely follows other allegations of the Complaint and the matter was fully litigated at the hearing. *Hi-Tech Cable Corp.*, *supra*.

(2) The July 22 allegations regarding DeVito

At the July 22 employee meeting, DeVito began the meeting by saying:

5 I want you guys to know that through these meetings I've been trying to keep
diligent notes of things we need to do. Uh, address that are questions that
people have concerns about. Uh obviously we can't go promising anything that
will change anything. All we can tell you is that, you know, we can certainly
10 address 'em and when the time comes when we can look at 'em on each
individual cases. But the questions I believe have been asked up to this point
and if these are if there's more questions please reiterate you know to me when
we're done with this questions. I've got tool deductions as a issue, I've go uh
work uh what do I have when it's time to go you know to retirement where do
15 where do I stand if I stay here twenty years or thirty years or whatever how long
you stay. Uh, training what kind of training and uh where's the company going?
Where are your goals or where are you gong to achieve the next level after you
done MASTER WORK, or you know, need a profession of what you do now,
where can you go from there? Those are the questions that I see that have been
20 brought to the table and things obviously we like to fix and have an opportunity to
fix before anybody else. But, that's all I got.³⁰

DeVito added,

25 Yeah, I can't come in here right now apparently because he says I can't come in
here and say this is what I have here right now because then it looks like, it looks
like a bribe. It looks like all I'm doin is trying to do this for you so you don't vote
he Union in. So I wanna, I don't want to keep goin and have you given unfair
labor practices against me. I mean we're gonna get em anyways that's just the
30 way it comes. But it ain't no use in having a care free attitude that you don't care
that you take all these hits and after you do this, again, I can't promise you
anything, can't make it sound like it's a bribe. OK? I can just tell you that we're
looking at it. That obviously, uh, for me that was never brought to my attention till
right now. That question about ceilings and where the structure lies in pays and
35 moving to departments. It's only been brought to my attention, me personally,
uh, now. In the last couple of, two days basically. So, no I think we could of
easily fixed this problem, well, and I can't promise you again anything but, I'd like
a chance. I'd like the chance to be able to fix it. You know, I, I, it can be fixed.
All we're askin' is for somethin' on paper and if you held to it I don't think that
40 we've ever put anything on paper.³¹

(3) The July 19 allegations regarding Tiernan

At the July 19 employee meeting, after some discussion of why the employees did not
need a union, Tiernan said:

45 Don't go out and pay for something you can fix yourself. Give this company a
chance to fix any problems you have. I've talked to some of the employees
already, just out of my own curiosity. Without even Vito (DeVito) or Tam (T.

50 ³⁰ General Counsel's exhibit 7(b) at page 1.

³¹ Id. at page 6

Thomas) or Fred (F. Thomas) knowing. I've talked to 'em. And they told me there's problems in this company. There's no doubt about it. These guys aren't perfect. No one's perfect. There's no perfect company out there. But don't fix something that's not broke. Try to fix it yourself. It can be fixed. Don't throw your money away for some organization that is more concerned about who's getting elected next political election or their own finances.³²

Later in the meeting Tiernan told employees regarding the issue of employer favoritism, "If that's bothering you or uh, you think somebody's getting promoted over somebody else, or somebody's getting better treatment you gotta let the company know so they can fix that. They gotta void that appearance."³³

At the July 22 meeting Tiernan discussed the lack of flexibility when personnel policies are reduced to writing and added, "You know, once you guys either elect or not elect a union here, even if we get that far, ok. We don't want to be back here in another year, ok. We're gonna fix whatever caused the situation to happen right now, to be fixed. Ok. We don't wanna be back here in a year, two years, doin' the same thing."³⁴

During the three employee meetings Respondents repeatedly solicited from its employees ways in which to improve conditions. F. Thomas asked employees to make a list of their problems. DeVito repeatedly stated that employees had raised issues that Respondent would try to remedy. Tiernan solicited grievances several times by telling employees Respondent would remedy problems employees raised. When viewed as a whole, the above enumerated statements by F. Thomas, DeVito and Tiernan during employee meetings were designed to raise issues employees had with Respondent and suggest they would be remedied in the face of a union organizing campaign. Such implied promises are violations of Section 8(a)(1) of the Act as alleged in the Complaint.

e. Invitation to Quit

In Complaint paragraph 6(c) it is alleged that on June 30, T. Thomas threatened employees with termination if they supported the Union organizing drive.

During the June 30 Union meeting, after learning that Respondent's employees were engaged in organizing a union through the efforts of Knebel, Ms. Thomas, said, "Anyone here who wants to be union can give two weeks notice and sign the books."

The Board has held, "It is well settled that an employer's invitation to an employee to quit in response to their exercise of protected concerted activity is coercive, because it conveys to employees that support for their union or engaging in other concerted activities and their continued employment are not compatible, and implicitly threaten discharge of the employees involved." *McDaniel Ford, Inc.*, 322 NLRB 956, 962 (1997).

³² General Counsel's Exhibit 7(a), page 2. Respondent's July 19, July 22 and August 12 meetings with employees were audiotaped by employee Andrew Pullen. These tapes were transcribed by the Union and excerpts of both the tapes and their transcripts were received into the record.

³³ Id. at page 11.

³⁴ Id at page 7.

It is clear that T. Thomas' statement that employees who wanted the Union could give two weeks notice was essentially an invitation to employees to terminate their employment in response to their protected activity and violates Section 8(a)(1) of the Act.

5 **f. Threat to Go Out of Business**

At the June 30 Union meeting, F. Thomas said he could not afford union wages and that it would put him out of business.

10 Statements to employees threatening them with loss of employment because of the union are coercive and violate Section 8(a)(1) of the Act. *Flying Foods*, 345 NLRB No. 10 (2005).

15 F. Thomas' statement that the union would put him out of business is a coercive statement indicating that employees would lose their jobs as a result of their activity protected under Section 7 of the Act. This conduct violates Section 8(a)(1) of the Act.

2. The Suspension and Termination of Knebel

20 In Complaint paragraph 9 General Counsel alleges that on July 6, Respondent suspended employee Knebel and on July 11, terminated Knebel because of his union activity and in order to discourage other employees' union activity.

25 Under *Wright Line*, 251 NLRB 1083 (1980), General Counsel has the burden of proving that anti-union animus directed against an employee's union activity was a motivating factor in discrimination against the employee. By proving an employee's protected activity, Respondent knowledge of the protected activity and Respondent hostility toward the protected conduct, General Counsel has established its prima facie case and the burden of proof shifts to Respondent to establish it would have taken the action against the employee even in the
30 absence of protected activity. *W.E. Carlson Corporation*, 346 NLRB No. 43 (2006).

There can be no doubt that Knebel was engaged in protected activity when he commenced efforts to organize Respondent's employees. This conduct consisted of calling the June 30 meeting at Gallo's restaurant and generally speaking to employees about the Union at
35 work. Likewise there is no dispute that Respondent became aware of Knebel's protected activity at the June 30 meeting when he told both F. and T. Thomas that he was an organizer for the Union and that Union business was being conducted at the meeting. Respondent's hostility toward the union activities was established through the Thomases comments at the June 30 meeting that employees who wanted the Union should resign and that the Union would cause
40 Respondent to go out of business. Later at the captive audience employee meetings DeVito reiterated that if employees wanted to join the Union they should leave and sign the Union's out of work list. Counsel for the General Counsel has established each element of its prima facie case under the *Wright Line* test. The burden shifts to Respondent to establish that it would have suspended and terminated Knebel even in the absence of his union activity.

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3. Respondent's Defenses

Respondent contends that it suspended and terminated Knebel not because of his protected activity but rather because Respondent's landlord Sparrowgrove insisted that he be
50 removed from his property and because Knebel lied on his employment application. For the reasons set forth below, I find that these proffered justifications for Knebel's suspension and termination are pretext.

In Respondent's July 11 letter terminating Knebel, the only reason Respondent offered for his termination was that on June 1 Sparrowgrove insisted that Knebel be removed from the property.

In fact T. Thomas admitted Respondent already had a copy of Sparrowgrove's initial eviction of Knebel, dated December 12, 2004 in their files before they hired Knebel. Moreover, on June 13, well before Sparrowgrove's July 1 eviction notice of Knebel sent at Respondent's request, Sparrowgrove had issued a letter rescinding Knebel's eviction.

Further indication that Sparrowgrove's eviction was a pretext is the total absence of Respondent conducting a full investigation into the facts of Knebel's alleged eviction. At no time did Respondent seek Knebel's version of what occurred. In fact, the so called investigation began two days after Respondent learned that Knebel was a Union organizer attempting to organize their employees. Sparrowgrove's July 1 letter was only requested by Respondent after they had confirmed from Sparrowgrove that Knebel was a union salt who had tried to organize Sparrowgrove's employees.

Only after his termination did Respondent's manufacture the additional reason for Knebel's termination, his false responses on his employment application. Given the timing of this justification for Knebel's discharge, it is obviously a pretext seized upon later to validate the unlawful termination. The investigation of the false application was not conducted until after Knebel's termination. Not until her September 26 letter to Knebel did T. Thomas mention the false application. Indeed, in her September 26 letter, after noting that Knebel had requested reinstatement, Thomas noted Knebel had filed an unfair labor practice charge and had an active part on behalf of the Union in the NLRB election among Respondent's employees.³⁵ Thomas' remarks suggest that Knebel's protected activity was the real reason for his termination.

Respondents further contend that Knebel's lack of candor in his job application demonstrates Knebel's dishonesty and rendered him unfit to work for Respondent. However, the record reflects Respondent's practice is to the contrary as Respondent has retained employees it knew had committed felonies including felony assault and shoplifting. Further, I do not credit T. Thomas testimony that she had previously terminated an employee for falsification of his application. Ms. Thomas testimony was vague as to the employee's name, the circumstances of the falsification. Respondent did not offer any documentary evidence in support of her testimony.

For the reasons set forth above, I conclude that Respondent's reasons offered for Knebel's suspension and termination are pretextual in nature. Respondent's defenses must fail and I conclude that in suspending and terminating Knebel, Respondent violated Section 8(a)(1) and (3) of the Act.

Conclusions of Law

Cable Tech, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

International Brotherhood of Electrical Workers, Local 1547, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

³⁵ General Counsel's exhibit 4.

Respondent has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act by engaging in surveillance and creating the impression of surveillance of its employees' union activity, by threatening employees with loss of jobs if they voted for the union, by telling
 5 employees they should quit if they chose the union, by soliciting grievances and by promising employees benefits in order to discourage their union activities and by suspending and terminating employee Dennis Knebel because of his union activity.

The above are unfair labor practices affecting commerce within the meaning of Sections
 10 2(6), (7) and (8) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action
 15 designed to effectuate the purposes of the Act.

In addition, since many of Respondent's employees work on a seasonal basis and may not be working at the time this Order is issued, I will recommend that copies of the attached Notice to Employees be mailed at Respondent's expense to employees as well as posted at
 20 Respondent's place of employment.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁶

ORDER

25 The Respondent, Cable Tech, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

30 (a) Engaging in surveillance or creating the impression of surveillance of their employees' union or other protected-concerted activities including activities on behalf of the Union.

35 (b) Soliciting grievances and promising to remedy those grievances in order to discourage employees from engaging in union or other protected-concerted activity.

40 (c) Promising employees training, health insurance benefits, loans, increased wages, increased retirement benefits or the possibility thereof in order to discourage employees from engaging in union activity.

(d) Encouraging employees to quit their employment or threatening employees with job loss for engaging in union activity.

36 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.
 50 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Suspending, disciplining or discharging employees because they have engaged in union activity or encourage other employees to engage in union activity on behalf of the International Brotherhood of Electrical Workers, Local 1547, AFL-CIO.

5 (f) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

10 (a) Within 14 days from the date of the Order, rescind the suspension and termination issued to Dennis Knebel on July 6 and 11, 2005, and offer Dennis Knebel reinstatement to his original position, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges.

15 (b) Make Dennis Knebel whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus interest.

20 (c) Within 14 days after the date of this Order, remove from its files any reference to the unlawful suspension and termination of Dennis Knebel and within 3 days thereafter notify Dennis Knebel in writing that it has done so and that the suspension and termination will not be used against him in any way.

25 (d) Within 14 days after service by the Region, post at its facilities in Anchorage, Alaska, copies of the attached notice marked "Appendix." ³⁷ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Company's authorized representative, shall be posted by the Company immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business, closed a facility involved in these proceedings, or has laid off employees, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since June 30, 2005.

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50 ³⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted Pursuant to an Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 22, 2006.

John J. McCarrick
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives or bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT engage in surveillance or create an impression of surveillance of your union activities on behalf of the International Brotherhood of Electrical Workers, Local 1547, AFL-CIO.

WE WILL NOT solicit your complaints and grievances and promise or implicitly promise to resolve those complaints in order to discourage your union activities.

WE WILL NOT promise you training, health insurance benefits, improved wage rates, loans for training, or improved pension benefits to discourage you from engaging in union activity.

WE WILL NOT encourage you to quit or threaten you with loss of jobs for supporting a union organizing drive.

WE WILL NOT suspend or discharge you because you have engaged in activity protected by the National Labor Relations Act or because you have attempted to encourage other employees to engage in protected activity in order to prevent you from engaging in union activities on behalf of the International Brotherhood of Electrical Workers, Local 1547, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Dennis Knebel reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges.

WE WILL make Dennis Knebel whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus interest.

WE WILL expunge from our files any reference to Dennis Knebel's suspension and discharge within 14 days and notify him, in writing within 3 days that this has been done and that the discharge and suspension will not be used against him in any way.

CABLE TECH, INC.

(Employer)

Dated _____

By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

915 2nd Avenue, Federal Building, Room 2948
Seattle, Washington 98174-1078
Hours: 8:15 a.m. to 4:45 p.m.
206-220-6300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 206-220-6284.